

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELLIOT A. GIBSON, EVAN A. GIBSON,
and EDWARD S. GIBSON,

Plaintiffs,

v.

The CITY OF KIRKLAND, a municipal
corporation, KIRKLAND POLICE
OFFICERS J. McMILLIAN and J.
TROMBLEY, and JOHN DOE KIRKLAND
POLICE OFFICERS 1-5,

Defendants.

No. C08-0937-JCC

ORDER

This matter comes before the Court on Defendants' Motion for Limited Extension of Discovery Deadline (Dkt. No. 39), Plaintiffs' Response in Opposition (Dkt. No. 49), and Defendants' Reply (Dkt. No. 58). The Court has considered the pleadings filed with respect to this motion and hereby finds and rules as follows.


Defendants seek to reopen discovery for two limited purposes. First, they propose to depose Muriel Gibson, Defendants' mother, to question her about Defendants' claim of emotional damages. (Mot. 7 (Dkt. No. 39).) Second, they request a subpoena duces tecum to third-party Macy's to obtain a document referenced in a last-minute interrogatory relating to Plaintiffs' claim of lost earnings. (*Id.* at 2.) After this motion was filed, the Court prohibited Plaintiffs from introducing evidence in support of their lost earnings claim as a sanction for repeated and flagrant

1 discovery violations; therefore, the Court DENIES AS MOOT Defendants' motion for a
2 subpoena duces tecum to obtain the document from Macy's.

3 As for the deposition of Muriel Gibson, Plaintiffs' attorney concedes that he agreed to
4 contact her on Defendants' behalf to schedule a deposition but that "[i]t slipped [his] mind to call
5 [her]." (Resp. 3 (Dkt. No. 49); Howell Decl. ¶ 2 (Dkt. No. 50).) He also concedes that
6 Defendants' attorney reminded him a "couple" of times, both before and after the close of
7 discovery. (Resp. 3 (Dkt. No. 49).) However, he now opposes Defendants' motion to reopen
8 discovery for the limited deposition, arguing that Plaintiffs did not "control" Ms. Gibson and that
9 Defendants could have contacted her on their own. (*Id.*) It is obvious from the record that
10 Defendants reasonably relied on Plaintiffs' attorney's representations that he would contact Ms.
11 Gibson to help schedule her deposition. Defendants have assured the Court that the deposition
12 would not impact the trial date (Mot. 5 (Dkt. No. 39)), and Plaintiffs have failed to identify any
13 prejudice that would result from granting the motion (Resp. (Dkt. No. 49)). Accordingly, the
14 Court GRANTS Defendants' motion to re-open discovery for the limited purpose of deposing
15 Ms. Gibson.

16 DATED this 11th day of March, 2009.

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John C. Coughenour
United States District Judge